IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 931 of 2001()

CRA.340/1995 of I ADDL. SESSIONS COURT, TRIVANDRUM
CC.120/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, NEYYATTINKARA

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REVN. PETITIONER:

MICHEL, S/O.JOHNSON,
CHANDRIKA VIHAR,
TOLADI, KUNNATHUKAL DESOM,
KUNNATHUKAL VILLAGE.

BY ADV. SMT.I.SHEELA DEVI
SMT.I.SHEELA DEVI
SMT.N.SUDHA DEVI
SMT.REJI RAMACHANDRAN
SMT.K.G.SAROJINI

RESPONDENTS:

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1. JAYADAS, S/O.CHELLAPPAN,
PROPRIETOR, SOBHA PRESS,
KARAKONAM, KUNNATHUKAL VILLAGE.

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.THIRUMALA P.K.MANI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 931 OF 2001 A

Dated this the 16th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.120/1994 on the file of the J.F.C.M.-III, Neyyattinkara challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause

(b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The learned counsel appearing for the revision petitioner contended that the cheque in question was actually entrusted with one Christudas by the revision petitioner who had arranged visa to the said Christudas for going abroad and at that time the revision petitioner had entrusted a blank signed cheque with Christudas, who was really misusing the same by handing over the same to the complainant, who is none other than his brother-in-law. The revision petitioner, admittedly, had received the statutory notice issued by the complainant. If his case be that the cheque in question was entrusted with Christudas, when he received statutory notice in this case, he must have realized that Christudas, with whom he had entrusted the cheque, had deceived and had misused the same by handing over the cheque to the complainant. Admittedly, he has not called upon Christudas to return the cheque nor has he sent even a notice to Christudas informing the latter that he had misused the cheque entrusted with him by the revision petitioner. This conduct of the revision petitioner also speaks volumes to indicate that his

defence cannot be accepted without a pinch of salt. It was in the backdrop of this that the trial court, which had the unique advantage of seeing the witness and assessing their credibility, was inclined to accept the testimony of the complainant. The lower appellate court has also confirmed the conviction. So long as this court is not able to find any infirmity in the appreciation of evidence by the courts below, this court, sitting in the rarefied revisional jurisdiction, will be loathe to dislodge the said finding recorded by the courts below concurrently. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding of guilt. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the

condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.90,000/- (Rupees ninety thousand only) within four months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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V. RAMKUMAR, J.

Crl. R.P. No. 931 OF 2001 A

O R D E R

16th day of August, 2007